

AMENDED IN SENATE APRIL 30, 2002

SENATE BILL

No. 2000

Introduced by Senator Dunn

February 22, 2002

An act to add Title 3.6 (commencing with Section 1883) to Part 4 of Division 3 of the Civil Code, relating to energy resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 2000, as amended, Dunn. Electric power and natural gas: unlawful practices.

Existing law sets forth obligations that arise from particular transactions.

This bill would prohibit any person engaged in the business of generating, selling, distributing, transferring, or marketing electricity or natural gas from engaging in specified unlawful acts or practices. This bill would provide that a person found in violation of these provisions would be required to disgorge the revenue from the unlawful acts, and would be liable for, among other things, 3 times the amount of the disgorgement and attorney fees. The bill would require that actions for relief under these provisions be brought in a court of competent jurisdiction by the Attorney General or by another person, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Title 3.6 (commencing with Section 1883) is
2 added to Part 4 of Division 3 of the Civil Code, to read:
3

1 TITLE 3.6. UNLAWFUL ELECTRIC POWER AND
2 NATURAL GAS PRACTICES

3
4 1883. For purposes of this chapter:

5 (a) “Competitive benchmark” for assessing market power is
6 determined as the short-run marginal costs of the highest cost unit
7 needed to meet demand.

8 (b) “Exercise of market power” means charging prices above
9 the competitive benchmark.

10 (c) “Market power” means the ability to profitably maintain
11 prices above competitive levels for a period of time. A person may
12 also possess market power with respect to significant competitive
13 dimensions other than price such as quality, service, or innovation.

14 (d) “Person” means and includes a natural person,
15 corporation, firm, partnership, joint stock company, association,
16 and other organization or entity of persons.

17 ~~1883.1.~~

18 1883.1. (a) A person engaged in the business of generating,
19 selling, distributing, transferring, or marketing electricity or
20 natural gas may not possess and exercise market power.

21 (b) There shall be a rebuttable presumption *affecting the*
22 *burden of proof* that market power was exercised in any case in
23 which prices above the competitive benchmark were charged.

24 1883.2. A person who violates Section 1883.1 shall, in
25 addition to other damages, be required to disgorge the revenue that
26 is equal to the difference between the actual price charged and the
27 competitive benchmark price as a result of that unlawful conduct.
28 As used in this section, “disgorgement” shall be measured by the
29 difference in the actual price charged and the competitive
30 benchmark price as a result of that unlawful conduct. In addition,
31 a person found to be in violation of Section 1883.1 shall be liable
32 for three times the amount of damages sustained, as measured by
33 the amount of disgorgement, because of the act or acts of that
34 person. A person found to be in violation of Section 1883.1 shall
35 also be liable for the costs of a civil action brought to recover those
36 damages and attorney fees.

37 1883.3. (a) Specific or preventive relief may be granted to
38 enforce a penalty, forfeiture, or penal law in any case of a violation
39 of Section 1883.1.

40 ~~(i)-(b)~~

1 (b) A person who engages, has engaged, or proposes to engage
2 in any of the conduct set forth in Section 1883.1, may be enjoined
3 in any court of competent jurisdiction. The court may make these
4 orders or judgments, including the appointment of a receiver, as
5 may be necessary to prevent the use or employment by a person of
6 a practice or conduct set forth in Section 1883.1, or as may be
7 necessary to restore to a person in interest money or property. The
8 court shall order the disgorgement of the revenue from the use or
9 employment of any act or practice prohibited by Section 1883.1,
10 and shall establish a fluid recovery fund for the return of the funds.
11 1883.4. Actions for relief pursuant to this chapter shall be
12 prosecuted exclusively in a court of competent jurisdiction by the
13 Attorney General, or by a person acting for the interests of itself,
14 its members, or the general public.
15 1883.5. Unless otherwise expressly provided, the remedies or
16 penalties provided by this section are cumulative to each other and
17 to the remedies or penalties available under all other laws of this
18 state.

